conviction under section 8(1) and substitute therefor a conviction of gaming in a public place under section 7(2) of the Ordinance.

The maximum penalty for promoting a gaming offence is a term of imprisonment not exceeding 12 months or a fine of $5,000 or both such imprisonment and fine. On the other hand the maximum penalty for gaming in a public place is a fine not exceeding $250. In the circumstances of this case I accordingly set aside the fine of $500 and substitute therefore a fine of $100.

I am told by Mrs. P. T. Oon, who appears for the appellant, that the Police have taken the finger-prints of the appellant. I do not know whether a conviction under section 8(1) empowers the Police to take the finger-prints, but having regard to the fact that the conviction has now been altered to the lesser offence under section 7(2), unless there is any lawful authority which empowers the Police, upon a conviction for an offence under section 7(2), to take and record the finger-prints of a convicted person, I direct that any finger-prints of the appellant which have been taken and recorded be destroyed by the Police.

Order accordingly.

Solicitors: *Lim, Lim & Oon.*

LETCHMAN v. MOHAMED GHANY

[A. C. J. (Rigby J.) September 1, 1960]

[Penang — Civil Appeal No. 5 of 1960]

Contract — Agreement to sell land with houses thereon — Agreement to demolish and remove the houses — Agreement to pay rent on failure to deliver possession.

In this case the respondent on April 12, 1956 entered into an agreement with the appellant and his brother to sell a piece of land with two houses on it. Under the terms of the agreement the respondent was to demolish and remove the houses from the said land within 24 months from the date of completion of the purchase. In consideration of his doing so the appellant and his brother were to pay him $1,000 to defray the costs of removal and re-erection on another site. Under clause 2 of the agreement, such payment was only to be made if the houses were demolished and removed within the period of 24 months. Clause 3 provided: "On failure or refusal of the purchaser to give and deliver up peaceable possession of the said land and hereditament and demolish and remove the said houses erected thereon on or before the time hereinbefore specified the purchaser agrees to pay a monthly ground rent of dollars fifty ($50) of the said houses to the sub-purchasers." The respondent did not, in fact, demolish the houses and he still remained on the land.

The question for consideration was whether upon a construction of clause 3 of the agreement the rent of $50 a month was payable as from the commencement of the agreement, or whether it was to commence, if the respondent still remained in possession of the land, after the expiration of 24 months, being the period within which he was required to demolish and remove the two houses from the land.

Held: the proper construction to be placed on clause 3 of the agreement was that the rental only became payable if the respondent remained in possession after the period of 24 months had expired.

CIVIL APPEAL.

T. Subbiah for the appellant.

Jag-Jit Singh for the respondent.

Rigby J. (delivering oral judgment): This is an appeal from a decision of the learned President of the Sessions Court, Penang. The facts of the case are really perfectly simple and straightforward. On the 12th April, 1956, the respondent entered into an agreement with the appellant and his brother to sell them a piece of land with two houses on it Under the terms of the agreement the respondent was to demolish and remove the two houses from the land within 24 months from the date of completion of the purchase. In consideration of him doing so the appellant and his brother were to pay him the sum of $1,000 to defray the cost of removal and re-erection on another site. It is clear, however, from clause 2 of that agreement that such payment was only to be made if the houses were demolished and removed within the period of 24 months. Clause 3 of the agreement then provides:—

"3. On failure or refusal of the Purchaser to give and deliver up peaceable possession of the said land and hereditaments and demolish and remove the said houses erected thereon on or before the time hereinbefore specified the Purchaser agrees to pay a monthly ground rent of Dollars Fifty ($50) of the said houses to the sub-purchasers."

The appellant was, in fact, described in that agreement as a sub-purchaser by reason of the fact that the land and buildings thereon had been purchased by the respondent himself from another person on the 16th April, 1955, and under the terms of that earlier agreement the full purchase price was to have been paid by the respondent to the original vendor within a period of 12 months. It is apparent that in fact there was not a completion of the purchase price within that periods, so that this agreement was to all intents and purposes an assignment of the contract of purchase from the respondent to the appellant and his brother. The respondent did not, in fact, demolish the houses and he still remained on the land. In evidence he said that he wanted to demolish and remove the two houses within 24 months and he had asked the appellant and his brother on numerous occasions for the $1,000 and had been told by them that they had no money. This evidence, although it was denied by the appellant, was, in fact, admitted by the appellant's own brother, a witness called by the appellant himself. However, for whatever reason he may have stayed on the land, it seems to me immaterial on the facts of the case. The fact is that he still remained in possession after the two years had expired.

In July, 1958, the appellant's solicitors wrote to the respondent drawing his attention to the agreement and requesting him to demolish and remove the houses in accordance with the terms of the agreement. That letter contained the following paragraph — and I quote it:—

"As a result of your said undertaking and assurance to my client under the said agreement my client has allowed you to enjoy and live there free of ground rents

since April, 1956, when he purchased the land on which your said houses are erected, as agreed by him under the said agreement."

The respondent replied through his solicitor to that letter tendering $100 being ground rent for the months of May and June, 1958. The respondent's letter refers to the fact that the respondent had himself previously tendered rent to the appellant, but it had been refused. The appellant, through his solicitors, replied to that letter refusing tender of the $100 for two months' rent and returning the money to the respondent's solicitor stating that the appellant now required the land for his own use. The second paragraph of that letter states:—

"My client states that under paragraph 1 of the agreement referred to in your said letter, your client agreed to vacate, demolish and remove his houses Nos. 38-B and 38-C, Mukim 13, Ayer Hitam Road, Penang, within 24 months from the date of the completion of the purchase of the said land and hereditaments by my client. As a result, my client, as agreed by him, allowed your client to occupy the said land for the said 24 months and up to date without any rent."

That paragraph omits the important fact that if, in fact, the respondent demolished and removed the houses within the period of 24 months he was to receive $1,000 from the appellant. That letter, however, was shortly followed by another one, which contained the curious sentence:—

"I am now instructed by my said client, Letchman alias Letchimanan (i.e. the appellant) to inform you that my client is prepared to allow you to continue to stay provided you pay all the rents due i.e. from 1st April, 1956, at the agreed rate of $50 a month."

The respondent declined to make any such payment. Hence these proceedings, in which the appellant, as plaintiff, claimed rent at $50 a month, from the date of the original agreement, 12th April, 1956, up to the end of April, 1959, after which date he in fact transferred the land to his brother.

The only question for consideration by the learned President was whether upon a construction of clause 3 of the agreement the rent of $50 a month was payable as from the commencement of the agreement, or whether it was to commence, if the respondent still remained in possession of the land, after the expiration of 24 months, being the period within which he was required to demolish and remove the two houses from the land. The learned President held — and, in my view, rightly held — that the proper construction to be placed on clause 3 of the agreement was that the rental only became payable if the respondent remained in possession after the period of 24 months had expired.

It was Mr. Subbiah's contention both in the lower Court and here that on his construction of the agreement the rent was to be paid from the date of entering into the agreement and that it was merely as an act of grace on the part of the appellant that he exempted the respondent from payment of any such rent within the period of two years. I am quite unable to see how any such construction can be placed upon that clause of the agreement. In my view, the learned President was perfectly right in his construction of the clause that rent should only commence to be paid as from the date of the expiration of the agreement itself. In my view, this appeal must be dismissed.

Mr. Subbiah has raised the point that in any event the appellant was entitled to succeed as to his claim for payment of the rent as from the date of expiration of the agreement up to the end of April, 1959. No doubt it was the duty of the respondent to have paid the rent either direct to the lessor or, alternatively, brought it to Court. It was, in fact, tendered to the lessor, but refused by him. Mr. Jag-Jit Singh concedes that since the appellant was, in fact, entitled to receive payment of the rent as from the date of the expiration of the agreement, it would be fair and reasonable that this appeal should be dismissed, with an order that the respondent should receive his costs only as to two-thirds of the amount both in the lower Court and in the appeal before this Court.

Appeal dismissed.

Solicitors: *Natha Singh & Subbiah; Jag-Jit Singh.*

SINARAJU v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Rigby and Neal JJ.) September 12, 1960]

[Ipoh — F.M. Criminal Appeal No. 14 of 1960]

Criminal Law and Procedure — Confession — Free and voluntary — Denial — Corroboration — Summing-up to jury.

When a person has been in police custody and the only evidence tendered against him at his trial is a confession, which is retracted, it is the duty of the Court to enquire into the matter with great care and satisfy itself that the confession has not been made by an inducement, threat or promise made by the police.

When a Judge sums up to a jury he must not be taken to be inditing a treatise on the law. He addresses himself to the particular facts of the case then before the jury, and no Judge can affect, in those circumstances, to give an exhaustive definition, or one which applied to every conceivable case.

Cases referred to:—

(1) *The King* v. *Meade* [1909] 1 K.B. 895, 898.

(2) *Yap Sow Keong & Anor.* v. *Public Prosecutor* [1947] M.L.J. 90, 91.

COURT OF APPEAL (CRIMINAL).

D. R. Seenivasagam for the appellant.

Abdul Hamid bin Omar (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment of the Court): We have come to certain conclusions regarding this case and there is no reason why they should not be stated here and now.

This appellant and another man were tried at the Ipoh Assizes before Mr. Justice Azmi and a jury for the murder of one Tangamani s/o Narayanan at Sengat Estate on or about 28th December, 1959, in contravention of section 302 of the Penal Code. The appellant was convicted